



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

June 16, 2004

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Aurene M. Martin
Acting Assistant Secretary-Indian Affairs
U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Ross P. Denny, Superintendent
Blackfeet Agency
Bureau of Indian Affairs
U.S. Department of the Interior
P.O. Box 880
Browning, MT 59417

Keith M. Beartusk, Regional Director
Rocky Mountain Regional Office
Bureau of Indian Affairs
U.S. Department of the Interior
316 N. 26th Street
Billings, MT 59101

Re: In the Matter of U.S. Department of Interior, BIA Blackfeet Agency
Facilities Management and Roads Complex
Docket No. **RCRA-08-2004-0005**
RCRA § 3008(a) Complaint, Compliance Order and Notice of
Opportunity for Hearing

Dear Assistant Secretary Martin, Regional Director Beartusk and Mr. Denny:

The United States Environmental Protection Agency ("EPA") is issuing the enclosed Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to the Bureau of Indian Affairs ("BIA") pursuant to its authority under sections 3008(a) and 6001 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928 and 6961, for alleged hazardous waste and used oil violations at the BIA Blackfeet Agency Facilities Management and Roads Complex facility located in Browning, Montana, within the exterior boundaries of the Blackfeet Indian Reservation.

Pursuant to section 6001 of RCRA, 42 U.S.C. § 6961, any Federal agency that violates any requirement of RCRA Subtitle C is subject to enforcement under section 3008 of the Act, 42 U.S.C. § 6928. The Complaint alleges that the facility is in noncompliance with RCRA and its implementing regulations, including the used oil requirements set forth at 40 C.F.R. part 279. An administrative penalty of \$34,381 is proposed for the violations.



Printed on Recycled Paper

EPA further alleges that BIA is in violation of section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the oil pollution prevention requirements set forth at 40 C.F.R. part 112, including failure to prepare and implement a Spill Prevention, Control and Countermeasures ("SPCC") plan in writing and in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. The enclosed Notice of Violation addresses the alleged SPCC violations as authorized by Executive Order 12088, 43 Fed.Reg. 47,707 (October 13, 1978), section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. Part 112.

With regard to the Complaint and alleged RCRA violations, you have the right to a hearing to contest the factual allegations and/or proposed penalty. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, BIA must file a written answer and one copy within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

If you do not file an answer by the deadline, you may be found in default. A default judgment may impose the full penalty proposed in the Complaint.

BIA has an opportunity to confer with the Administrator prior to the Complaint becoming final after the administrative proceedings subject to Part 22 have been fully exhausted, including the filing of an appeal with the Environmental Appeals Board ("EAB") pursuant to 40 C.F.R. § 22.30. Within thirty (30) days of service of the EAB's final decision, BIA may file a written request with the Administrator seeking an opportunity to confer. This order will become final pursuant to section 6001(b) of RCRA, 42 U.S.C. § 6961(b), if no written request to confer is filed within the designated thirty (30) day period.

Whether or not you request a hearing, we encourage you to confer informally with EPA concerning the alleged violations to negotiate a settlement in lieu of proceeding with a formal hearing. You may wish to appear at an informal conference yourself and/or be represented by your counsel. To arrange for such a conference, please contact Amy Swanson, Enforcement Attorney, Legal Enforcement Program, at the number provided below. While an informal conference procedure may be pursued as an alternative to, or simultaneous with, a hearing, request for such a conference does not extend the thirty (30) day period during which a request for hearing must be submitted.



If you have any technical questions relating to this matter, please call Ms. Susan Zazzali in our Montana Office at (406) 457-5019. All legal questions can be directed to Ms. Amy Swanson at (303) 312-6906. We urge your prompt attention to this matter.

Sincerely,

SIGNED

John F. Wardell, Director
Montana Office

Enclosures: RCRA Complaint
OPA NOV
40 C.F.R. Part 22
RCRA inspection
SPCC Inspection

cc w/ enclosures:

Jay St. Goddard, Blackfeet Tribe
Gerald Wagner, Blackfeet Tribe



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)	Docket No. RCRA-08-2004-0005
)	
U.S. Department of Interior,)	COMPLAINT, COMPLIANCE ORDER,
Bureau of Indian Affairs,)	AND NOTICE OF OPPORTUNITY
Rocky Mountain Region and)	FOR HEARING
Blackfeet Agency,)	
)	
Facilities Management and)	Proceeding under section 3008(a) of the
Roads Complex Facility,)	Resource Conservation and Recovery Act
)	
Respondent.)	

COMPLAINT

This is a civil administrative action instituted pursuant to section 3008(a) of the Solid Waste Disposal Act, as amended by and hereafter referred to as the Resource Conservation and Recovery Act and subsequent amendments ("RCRA" or "the Act"), 42 U.S.C. § 6928(a). Section 3008(a) of the Act, 42 U.S.C. § 6928(a), authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to issue complaints and compliance orders whenever the Administrator determines that any person has violated or is in violation of any requirement of RCRA Subtitle C, 42 U.S.C. §§ 6901-6991. Authority to issue this Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") has been properly delegated to the undersigned officials. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (40 C.F.R. part 22), a copy of which is enclosed.



GENERAL ALLEGATIONS

The following general allegations apply to and are incorporated in each of the counts in this Complaint:

1. Subtitle C of RCRA, 42 U.S.C. § 6921 et seq., authorizes EPA to regulate the generation, transportation, storage and disposal of hazardous waste.
2. Section 3002 of the Act, 42 U.S.C. § 6922, authorizes EPA to promulgate regulations establishing such standards applicable to generators of hazardous waste identified or listed under the subchapter, as may be necessary to protect human health and the environment. EPA has promulgated such regulations at 40 C.F.R. parts 261, 264, 265, 266, 268, 273, and 279.
3. Pursuant to section 3008(a) of the Act, 42 U.S.C. § 6928(a), EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance, or both, or commence a civil action for appropriate relief in United States district court upon determining that any person has violated or is in violation of any requirement of the subchapter.
4. Pursuant to section 6001 of the Act, 42 U.S.C. § 6961, the Administrator may commence an administrative enforcement action against any department, agency or instrumentality of the executive, legislative or judicial branch of the federal government pursuant to the enforcement authorities contained in the chapter, including the assessment of civil penalties and the issuance of compliance orders pursuant to section 3008 of the Act, 42 U.S.C. § 6928.
6. The Bureau of Indian Affairs (“BIA” or “Respondent”) is a Bureau of the United States Department of Interior and a “person” within the meaning of section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. §260.10.
7. Respondent is an “owner” and an “operator” of a “facility” within the meaning of



40 C.F.R. § 260.10.

8. Respondent owns and operates the BIA Blackfeet Agency Facilities Management and Roads Complex (also known as “Roads Yard”) facility (“facility”) for the purpose of performing road work and providing operation and maintenance support for BIA Blackfeet Agency buildings.

9. The facility consists of several shops and service bays surrounded by a chain link fence based on a facility map (“map”), hereby referenced and incorporated herein as Exhibit A. The facility specifically includes, but is not limited to, a large three-bay garage referred to as the “BIA Road Shop” (building no. 4), an irrigation building (building no. 3), garage bays located southeast and perpendicular to the roads shop (building no. 2 on the map), a trailer, a wooden shed managed by the Fire Cache personnel, two home trailers (buildings no. 9 and 11 on the map), a shed east of building 117, building 117, building 118 (a metal building used primarily as a storage shed), a paved used oil and waste aggregation area, the Facilities’ shop (buildings no. 5 and 10 on the map), a drum storage area, a vehicle/maintenance yard, and all surrounding areas. Most of the outside ground is dirt and grass with some areas covered with gravel and some areas covered with asphalt.

10. Respondent conducts the following processes or operations at the facility: oil changes, battery replacements, body and engine repairs, fluid changes (coolant and hydraulic fluids), painting, weed control, lawn maintenance, cleaning.

11. Respondent’s operations and processes at the facility generate “solid waste” within the meaning of section 1004(27) of the Act, 42 U.S.C. § 6903(27), and 40 C.F.R. § 261.2.

12. Solid waste generated at the facility includes, but is not limited to, lead-acid batteries, scrap metal, non drained oil filters, unknown liquids and spent aerosol cans.



13. Respondent's operations and processes at the facility generate "used oil" within the meaning of section 1004(36) of the Act, 42 U.S.C. § 6903(36).

14. Respondent's operations and processes at the facility generate "hazardous waste" within the meaning of section 1004(5) of the Act, 42 U.S.C. § 6903(5), and 40 C.F.R. § 261.3.

15. Hazardous waste generated at the facility includes, but is not limited to, lead-acid batteries and spent aerosol cans containing listed solvents (F001).

16. Respondent is a generator of hazardous waste within the meaning of section 1004(6) of the Act, 42 U.S.C. § 6903(6).

17. On October 21, 2002, authorized EPA representative Susan Zazzali and Gerald Wagner and Bill Old Chief on behalf of the Blackfeet Environmental Office (hereafter referred to collectively as "the inspectors") conducted an inspection (the "inspection") of the facility to evaluate compliance with the hazardous waste and used oil requirements as a follow-up to site visits conducted in June 2002 and June 1999.

18. The inspection was conducted with Respondent's consent and representatives present.

19. The inspection included a physical inspection of the facility and interview of available BIA personnel.

20. At the time of the inspection, the facility was littered with solid waste including but not limited to garbage, defunct vehicles, heavy equipment, barrels, plastic jugs, containers, lead-acid batteries and miscellaneous debris.

21. At the time of the inspection, the following facility buildings were locked and could not be inspected: the irrigation building, building 117, and the shed located east of building 117.



22. At the time of the inspection, cleaning and paint products containing listed solvents and solvent-soaked rags were haphazardly discarded inside the BIA Roads Shop (a/k/a “building no. 4”).

23. Used mineral oil was found in the BIA Roads Shop building in the bottom half of a 30 gallon drum, located atop a home fryer and stored on the floor under a workbench.

24. There was evidence of used oil releases into two floor drains in the BIA Roads Shop building.

25. A drum labeled “antifreeze” was in the BIA Roads Shop building.

26. A BIA representative stated that the antifreeze was recycled but the recycling equipment was dirty and abandoned in a pile of debris.

27. Two open, unlabeled containers of used oil were in the “Roads Construction Area” of building no. 4 (the Road Shop garage bay).

28. One of the containers was a plastic 5-gallon bucket containing used oil and a mixture of debris.

29. Respondent was unaware of the length of time the bucket had been stored at that location or the source of the used oil.

30. An abandoned five-gallon bucket with a partially submerged concrete slump test cone in a hardened state was found in the Road Construction Area.

31. A BIA representative explained that they had been attempting to remove the concrete from the cone with an unidentified cleanser.

32. BIA could not identify the cleanser or the length of time that the bucket had been in that location.

33. Used paint cans were in the attic above the Road Construction Area. BIA could



not answer questions regarding the type of paint or its usability.

34. Two 55-gallon trash drums containing spent aerosol cans were outside the Road Construction Area.

35. The labels on the cans indicated that the contents included listed chlorinated solvents.

36. Two open and unlabeled 5-gallon buckets containing used oil were located in building no. 2.

37. BIA could not explain the source of the used oil or how long it had been stored at that location.

38. Several lead-acid vehicle batteries coated with pigeon droppings were on a pallet inside building no. 2.

39. An open, unlabeled bucket of used oil and a vehicle battery were outside of building no. 2.

40. Large areas of oil-stained soil were found outside of building no. 2.

41. Numerous areas of spilled used oil were located on the ground around the exterior of the facility.

42. Crushed used oil filters were found in a trash can and two oil filters were seen draining onto the ground in the yard.

43. Several fuel containers were outside behind a building and mingled with garbage.

44. A dented, overturned 55-gallon drum was located in the weeds. BIA representatives were unaware of the drum's contents or how long it had been in that location.

45. Inside the wooden Fire Cache shed were incompatible paints, oils, fuels, pesticides and a propane tank.



46. The containers were dirty, abandoned, and the manner in which they were stored posed a threat of combustion and fire.

47. Evidence existed in the used oil and waste aggregation area that several drums labeled “used oil” had overflowed. The used oil spills had not been cleaned up.

48. One unlabeled drum containing a tan liquid sludge and debris was in the used oil and waste aggregation area.

49. Chemical and fuel containers were in the shed east of building 117.

50. Four large vehicle batteries were observed in building 118 in a manner that could release to the environment. The batteries were susceptible to being knocked over or crushed by heavy equipment. BIA had no information regarding the source or age of the batteries.

51. Numerous used oil containers were stored at the facility in a manner permitting a release to the environment. The containers were not securely lidded, vulnerable to being knocked over by heavy equipment and were outside exposed to extreme weather conditions

52. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), states in pertinent part that any person who violates any requirement of the subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$27,500 for each violation and that each day of violation shall constitute a separate violation.

Count 1
(Failure to perform hazardous waste determination)

53. 40 C.F.R. § 262.11 requires a person who generates any solid waste to determine if that waste is a hazardous waste. First, the person must determine if the waste is listed in 40 C.F.R. part 261, subpart D. The person must then determine if that waste is a characteristic hazardous waste under 40 C.F.R. part 261, subpart C, using either knowledge of process or



sampling in accord with sampling methodologies cited in the regulations.

54. Respondent failed to determine whether the solid waste generated at the facility and subsequently stored on-site in drums, jugs and other containers described in the General Allegations Section (paragraphs 1 through 52), was a hazardous waste as required by and in accordance with 40 C.F.R. § 262.11.

55. Respondent's failure to perform hazardous waste characterizations or determinations for the solid waste materials generated at the facility constitutes a violation of 40 C.F.R. § 262.11 and section 3008(a) of the Act, 42 U.S.C. § 6928(a).

Count 2
Failure to inventory properly

56. 40 C.F.R. § 261.5(c) requires a person to determine the quantity of hazardous waste generated in a calendar month to determine whether the generator is a conditionally exempt small quantity generator or a large quantity generator subject to regulation under 40 C.F.R. parts 262 through 266, 268, and parts 270 and 124, and the notification requirements of section 3010 of the Act, 42 U.S.C. § 6930.

57. Respondent failed to determine the quantity of hazardous waste generated at the facility per calendar month in accordance with 40 C.F.R. § 261.5(c), and prohibited itself from properly determining its generator status and related timeframe for storing hazardous waste on-site.

58. Respondent's failure to determine the quantity of hazardous waste generated at its facility by calendar month constitutes a violation of 40 C.F.R. § 261.5 and section 3008(a) of the Act, 42 U.S.C. § 6928(a).



Count 3
Failure to comply with used oil requirements

59. 40 C.F.R. § 279.22(a), pertaining to storage units, specifies that used oil generators shall not store used oil in units other than tanks, containers or units subject to regulation under 40 C.F.R. parts 264 or 265.

60. 40 C.F.R. § 279.22(b), pertaining to condition of units, specifies that containers and above ground tanks used to store used oil at generator facilities must be: (1) in good condition (no severe rusting, apparent structural defects or deterioration) and (2) not leaking (no visible leaks).

61. 40 C.F.R. § 279.22(c), labels, specifies that (1) containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil” and (2) [f]ill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words “Used Oil.”

62. 40 C.F.R. § 279.22(d), response to releases, specifies that upon detection of a release of used oil to the environment that is not subject to the requirements of 40 C.F.R. part 280, subpart F, and which has occurred after the effective date of the recycled used oil management program in the State in which the release is located, a generator must perform the following cleanup steps: (1) stop the release; (2) contain the released used oil; (3) clean up and manage properly the released used oil and other materials; and (4) if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

63. 40 C.F.R. § 279.22 generally states that used oil generators are subject to all applicable Spill Prevention, Control and Countermeasure regulations (40 C.F.R. part 112) in



addition to the requirements of this subpart. Used oil generators are also subject to the Underground Storage Tank (40 C.F.R. part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition the requirements of this subpart.

64. Respondent failed to store used oil in units other than tanks, containers or units subject to regulation under 40 C.F.R. parts 264 or 265, failed to label or clearly mark with the words "Used Oil" the container and aboveground tanks used for used oil storage, and failed to the requisite cleanup steps outlined in 40 C.F.R. § 279.22(d) for releases of used oil as required by and in accordance with 40 C.F.R. § 279.22.

65. Respondent's failure to comply with the used oil requirements constitutes a violation of 40 C.F.R. § 279.22 and section 3008(a) of the Act, 42 U.S.C. § 6928(a).

PROPOSED CIVIL PENALTY

Pursuant to Section 3008(g) of the Act, 42 U.S.C. § 6928(g), any person who violates any requirement of RCRA is liable for civil penalties up to \$27,500 per day per violation for violations occurring on or after January 30, 1997, and before March 15, 2004, pursuant to section 3008(g) of the Act, Pub. L. 104-134 and 61 Fed. Reg. 69360. Based upon the facts alleged in this Complaint, and taking into account the factors prescribed by statute, i.e., the seriousness of violations and any good faith efforts to comply with applicable statutory and regulatory requirements, Complainant proposes to assess a total civil penalty of **\$34,381** for the violations alleged in the Complaint, as follows:

COUNT

VIOLATION

PROPOSED PENALTY



Count 1	Failure to perform hazardous waste determination, 40 C.F.R. § 262.11	\$14,381
Count 2	Failure to inventory properly, 40 C.F.R. § 261.5(c)	(Incorporated above)
Count 3	Failure to comply with used oil requirements, 40 C.F.R. 279.22(a)	\$20,000

TOTAL PROPOSED PENALTY: \$34,381

The penalty proposed above takes into account the statutory factors and was calculated in accordance with EPA's RCRA Civil Penalty Policy (October 1990). This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The reasoning behind this penalty is detailed in the penalty calculation for this case, incorporated herein by reference and enclosed as Attachment 1.

TERMS OF PAYMENT

If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full. If such payment is made within 30 calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, followed by penalty payment within 60 days. Payment is to be made by sending a certified or cashier's check payable to "Treasurer, United States of America," to:

EPA Region 8
(Regional Hearing Clerk)
Mellon Bank
P.O. Box 360859M
Pittsburgh, PA 15251



A copy of the check must be mailed simultaneously to:

Amy Swanson, Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8 (8ENF-L)
999 - 18th Street, Suite 300
Denver, Colorado 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to perform the activities required by the compliance order. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

COMPLIANCE ORDER

Based upon the allegations above, and pursuant to Section 3008(a) of the Act, 42 U.S.C. § 6928(a), it is hereby ORDERED as follows:

1. Respondent shall immediately comply with RCRA and its implementing regulations including, but not limited to, those requirements set forth in 40 C.F.R. parts 261, 262, 279, and those requirements specifically required in this Compliance Order (“Order”) section of the Complaint.

2. Within fifteen (15) days of receipt of this Order, Respondent shall comply with the regulations governing the management of used oil including, but not limited to:

- a. Covering and storing all containers of used oil in a manner to prevent spills;
- b. Properly labeling all all containers of used oil in accordance with 40 C.F.R. § 279.22(c)(1);
- c. Excavating and disposing of all spills of used oil and soils stained with used oil at a licensed solid waste landfill;



3. Within thirty (30) days of receipt of this Order, Respondent shall submit to EPA an inventory of all containers of used oil and spent batteries. The inventory shall include a photograph and description of each container, the volume and the location.

4. Within thirty (30) days of receipt of this Complaint, Respondent shall arrange for proper disposal, either as a hazardous waste or through recycling all spent batteries, and Respondent further shall submit to EPA all manifests and other records documenting such shipments were in compliance with all applicable RCRA regulations within fifteen (15) days of shipment.

5. Within forty-five (45) days of receipt of this Complaint, Respondent shall properly remove and recycle (or remove for recycling) all used oil. Respondent shall ensure that all used oil is transported by a licensed used oil transporter. Respondent shall ensure that all used oil is recycled by a licensed recycler.

6. The inventory, manifests and all other reports or documents required to be submitted under this Order shall be mailed to:

Susan Zazzali, Environmental Engineer
U.S. Environmental Protection Agency
Region 8 Montana Office
Federal Building
10 West 15th Street, Suite 3200
Helena, MT 59626

and to:

Gerald Wagner, Director
Environmental Program
Blackfeet Tribe
P.O. Box 2029
Browning, MT 59417



POTENTIAL LIABILITY FOR ADDITIONAL PENALTIES

Pursuant to section 3008(c) of the Act, 42 U.S.C. § 6928(c), respondents who fail to achieve compliance within the time specified in a compliance order are liable for an additional civil penalty of up to \$27,500 for each day of continued noncompliance.

OPPORTUNITY TO REQUEST A HEARING

As provided in section 3008(b) of the Act, 42 U.S.C. § 6928(b), a respondent has the right to request a public hearing within thirty (30) calendar days after this Complaint is served. If you (1) wish to contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the proposed penalty or compliance order; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written answer in accordance with 40 C.F.R §§ 22.15 and 22.37 within thirty (30) calendar days after this Complaint is received.

Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state all facts and circumstances, if any, which constitute grounds for defense; (3) state the facts intended to be placed at issue; and (4) specifically request an administrative hearing, if desired. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 999 18th Street, Suite 300, Denver, Colorado 80202-2405, and a copy must be sent to the enforcement attorney listed below.

IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R § 22.17. THIS JUDGMENT MAY IMPOSE THE



PENALTY PROPOSED IN THE COMPLAINT.

In accordance with section 6001(b)(2) of the Act, 42 U.S.C. § 6961(b)(2), no administrative order issued to a department, agency or instrumentality of the Federal government shall become final until such department, agency or instrumentality has had the opportunity to confer with the Administrator. The opportunity to confer with the Administrator arises prior to the order becoming final after the administrative proceedings subject to Part 22 have been fully exhausted, including the filing of an appeal with the Environmental Appeals Board (“EAB”) pursuant to 40 C.F.R. § 22.30. Within thirty (30) days of service of the EAB’s final decision, Respondent may file a written request with the Administrator seeking an opportunity to confer. This order will become final pursuant to section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), if no written request to confer is filed within the designated thirty (30) day period.

RESERVATION OF RIGHTS

This Complaint does not constitute a waiver, suspension or modification of EPA’s authority to issue a separate order under section 7003 of the Act, 42 U.S.C. § 6973, based on evidence of an imminent and substantial endangerment to human health or the environment posed by the handling, storage, treatment, transportation or disposal of any solid waste at the facility. Issuance of this Complaint does not forego any civil or criminal action otherwise authorized under the Act.

Respondent may be subject to a citizen suit for violation of this order once effective pursuant to and in accordance with section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

Violation of the terms of this order assessing civil penalties or requiring compliance may result in the assessment of a civil penalty of not more than \$27,500 for each day of continued noncompliance with the order pursuant to section 3008(c) of RCRA, 42 U.S.C. § 6928(c).



SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference, or any questions that you may have regarding this Complaint and compliance order, should be directed to the attorney listed below.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8, Complainant.

Date: 5/28/04

By: David J. Janik
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program

Date: 6/10/04

By: SIGNED
John F. Wardell, Director
Montana Office

Date: 6/1/04

By: SIGNED
Amy Swanson, Enforcement Attorney
Colorado Atty. Reg. No. 26488
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466



Telephone: 303/312-6906
Facsimile: 303/312-6953



CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that a true copy of same was sent via Certified Mail, Return Receipt Requested, to:

Aurene M. Martin
Acting Assistant Secretary-Indian Affairs
U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Keith M. Beartusk, Regional Director
Rocky Mountain Regional Office
Bureau of Indian Affairs
U.S. Department of the Interior
316 N. 26th Street
Billings, MT 59101

Ross P. Denny, Superintendent
Blackfeet Agency
Bureau of Indian Affairs
U.S. Department of the Interior
P.O. Box 880
Browning, MT 59417

June 16, 2004 _____
Date

SIGNED _____
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 16, 2004.



